

Office Action, except for the rejection of claim 2 which is based on a new grounds of rejection. For this reason alone, Applicants respectfully submit and request that should the application not be allowed on the basis of the remarks below, that the present office Action be made non-final.

In this Office Action, the Examiner provides a Response to Arguments contained in the April 26, 2005 Amendment. In the April 26, 2005 Amendment, Applicants argued that claim 1 recites, *inter alia*, “selecting a route having no overlapping used by another packet with higher precedence.” The Examiner states that this feature is disclosed by Lin at column 2, lines 40-52. The Examiner also states that if different classes of service are being offered, the precedence of the packets must be known and stored. The Examiner additionally states in the Response to Arguments section in this Office Action that Lin discloses different classes of service being routed through different channels, which reads on the “selecting a route having no overlapping used by another packet with higher precedence” as is disclosed in claim 1. The Examiner argues that the service classes of Lin relate to precedence information, and that each packet in Lin would belong to a particular class of service.

Applicants again submit that Lin does not disclose the precedence feature as recited. First, Lin discloses that the assignment of a channel at a data service request is not disclosed in Lin, but rather U.S. Patent No. 5,675,732, and that as such, Lin discloses the apparatus and method for distributing data services (see col. 4, lines 23-30). As such, Lin does not teach route selection and precedence. Thus, precedence of each packet is also not taught by Lin. In response to the Examiner’s statement in the Response to Arguments section that the service classes of Lin relate to precedence information, Applicants respectfully traverse this argument.

The different classes of service in Lin are related to data transmission rates of each channel. Thus, in Lin, there can be a 256kps service in channel 1 and a 64 Kbps service in channel 2 (see col. 2, lines 41-52). In Lin, the users themselves select the bandwidth/route for transmission. This is granted unless there is not specific bandwidth available on that channel (see col. 5, lines 16-21). On the other hand, precedence of a packet, as known in the art, is based on, among other factors, the need for immediacy, such as when communicating moving images and voice communications (see the present specification at page 1, third paragraph). In Lin, a user selecting a bandwidth/route for transmission based on a service level would not know the precedence of another packet by another user (nor is this disclosed), and therefore, there is no consideration in Lin given to overlapping of packets as in the present invention. That is, Lin determines the services available, and provides the bandwidth/route to everyone without regards to precedence. Thus, claim 1 (as well as claim 5 which includes these features) is allowable.

Claim 2 recites “wherein said empty band related information is return times of dummy packets.” The Examiner states that this feature is disclosed by Lin, column 2, lines 21-28 (the test message is a dummy packet), and new to this Office Action argues a new grounds of rejection that in view of the prior art disclosed in Lin in column 1, lines 35-39 (describing the TCP/IP “ping” utility), it would have been obvious to one skilled in the art at the time of the invention to use the “ping” utility in the system of Lin. The Examiner states that the motivation would be to use an old, well known functionality of a common protocol.

By the new grounds of rejection, the Examiner has inherently acknowledged Applicants prior response that Lin does not disclose or suggest *return times* of dummy packets at col. 1,

lines 1-35. Further, Lin itself teaches that the “ping” command is not suitable for the present invention, and that under the methods described in the Lin invention, the time needed for a test message to travel the low speed telephone link *is eliminated* from the computation to measure the average data transmission rate (see col. 1, lines 55-67). Thus, Lin actually teaches away from the Examiner’s proposed combination. Accordingly, claim 2 is allowable in view of the new grounds of rejection.

With regards to claim 3, the Examiner states in the Response to Arguments that Lin discloses the IP “ping” utility, which uses return dummy packets and is a well known part of a common protocol suite, and that the service classes of Lin relate to the claimed precedence function. Applicants submit for the reasons above that the precedence feature of the present invention is not disclosed or suggested by Lin, and further that Lin teaches away from the use of the “ping” utility. As such, Applicants respectfully submit that claim 3 is allowable.

Claim 4 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Lin in view of Nederlof and in further view of Bellovin et al. (U.S. Patent No. 5,870,557). The Examiner states in the Response to Arguments section that regarding claim 4, claims 1 and 3 still stand rejected. Since the Examiner did not address Applicants’ argument from the April 26, 2005 Amendment regarding claim 4, Applicants would like the Examiner to confirm that claim includes patentable feature, but is now only rejected on the basis of its dependency on claim 3. Applicants further maintain the arguments from the prior Amendment. Further, Applicants again request that should the application not be passed to issue, that the Examiner issue a non-final Office Action to address Applicants’ prior arguments with respect to claim 4.


RESPONSE UNDER 37 C.F.R. § 1.116  
U.S. Application No. 09/859,462

Attorney Docket No. Q64555

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

*for*  #40,766  
Ronald Kimble  
Registration No. 44,186

SUGHRUE MION, PLLC  
Telephone: (202) 293-7060  
Facsimile: (202) 293-7860

WASHINGTON OFFICE

**23373**

CUSTOMER NUMBER

Date: September 30, 2005